

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 608 of 1989

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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JASHWANTSINH B PARMAR

Versus

BANK OF BARODA & ORS

Appearance:

1. Special Civil Application No. 608 of 1989
Shailesh Brahmbhatt for Petitioner
MR Darshan M Parikh for Respondent No. 1, 2, 3
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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 8/12/2000

CAV JUDGEMENT

The petitioner at the relevant time was employed

as officer in the Nadiad Branch of Bank of Baroda. A disciplinary inquiry was initiated against him on charges and allegations inter alia that he unauthorisedly took the Bank's jeep and drove it himself on 16.1.1985 which resulted in a serious accident with death of a cyclist. In order to cover up his reckless and unauthorised act, he falsely reported to the Bank that he had engaged a driver for going on official work. In order further to cover up his wholly unauthorised act, he indiscriminately sanctioned loan to several parties to oblige them and to gain favours from them. In the statements of allegations, it was alleged that to create a false evidence of engagement of a driver on temporary basis, entries in the logbook were tampered with, loans were hurriedly advanced to several parties without obtaining proper proposals and getting the loan documents filled by the parties.

2. The Inquiry Officer by the report dated 16.11.1987 found all the charges to have been proved. On the basis of the report of the Inquiry Officer, the Disciplinary Authority by impugned order dated 19.2.88 imposed the punishment of dismissal of the petitioner from the bank's service.

3. The petitioner preferred an appeal provided under the Bank of Baroda Officers Employees (Discipline and Appeal) Act, 1976. The Appellate Authority also by the impugned order dated 15.11.1988 upheld the findings of the Inquiry Officer and Disciplinary Authority and dismissed the appeal. It is against the above orders of the Disciplinary Authority and the Appellate Authority that the petitioner has approached this Court by this petition under Article 226 of the Constitution of India.

4. Learned Counsel Shri Shailesh Brahmhatt appearing for the petitioner moved C.A.No. 1054 of 2000 seeking permission to amend the petition to bring on record subsequent developments to this Court. It is pointed out that a claim petition was lodged before the Motor Accident Claims Tribunal, Nadiad by the legal representatives of the cyclist who had died in the accident. In the Claim Tribunal, the Bank as well as the Insurance Company contested the case on the ground that the vehicle was driven not by the petitioner but by a driver Ahmedbhai Kalubhai. The judgement of the Motor Accident Claims Tribunal, Kheda at Nadiad dated 11.12.1991 has been filed alongwith a application to show that the Claims Tribunal exonerated the present petitioner completely from any liability towards compensation on the ground that he was not on the driving

wheel of the jeep. Since permission sought was only to bring the above development on record with the copy of the judgement of the Claims Tribunal, I have allowed the application and taken pleas and documents on record.

5. The Learned Counsel firstly contends that on the incident of jeep accident, a criminal case was lodged in the Court of Judicial Magistrate First Class, Balasinore under Section 269, 304 C, 427 I.P.C. read with 112, 89, 116 of the Motor Vehicles Act. The Judicial magistrate First Class by his judgement dated 30.5.85 acquitted the petitioner of the charges by coming to a finding that the prosecution failed to prove that the vehicle on the date of accident was driven by the petitioner. Ld. Counsel Shri Brahmabhatt appearing for the petitioner contends that after the judgement of acquittal dated 30.5.85 of the Judicial Magistrate, it was not competent for the Disciplinary Authority to issue a chargesheet on 8.9.1986. By issuing chargesheet on allegations which were not found proved by the Criminal Court, the Disciplinary Authority had made an attempt to sit over the judgement of the Criminal Court and such a course is not legally permissible. The second ground urged is that before the Claims Tribunal, the case of the Bank and the Insurance Company was that the jeep was driven by an engaged driver and not by the petitioner. In view of such a plea before the Claims Tribunal, it was not open to the Disciplinary Authority to take a different stand in the inquiry and come to a contrary conclusion that the petitioner was on the driving wheel and because of his careless and negligent act the fatal accident occurred.

6. On the allegations with regard to irregularity in disbursement of loan, Learned Counsel submits that those were minor irregularities committed under a bonafide belief that the necessary formalities would be got completed through the borrowers. In none of the loan cases, there has been any loss caused to the bank. Lastly, it is submitted that only for an unfortunate incident of jeep accident a very severe penalty of dismissal from service has been imposed upon the petitioner and this Court should therefore interfere in the quantum of penalty.

7. I have also heard the Learned Counsel Shri D.M.Parikh for the Bank who tried to reply each and other contentions advanced on behalf of the petitioners to support the action of the Disciplinary Authority.

8. After hearing the Learned Counsel for the parties and perusing the record of the case, I do not find it

possible to accept any of the contentions advanced on behalf of the petitioner to assail the disciplinary proceedings. The English translation of the judgement of the Criminal Court has been placed before me. The petitioner was acquitted of the charges framed under the Indian Penal Code and the Motor Vehicles Act on the ground that there were no witnesses who had identified the accused as driver of the jeep. Even after the acquittal of the petitioner by the Criminal Court for alleged offences under Indian Penal Code and the provisions of the Motor Vehicles Act, it was competent for the Bank as employer to proceed against the petitioner for the alleged misconduct in accordance with the service regulations. The allegation of the bank was that only in order to set up a defence in the criminal case, the petitioner falsely reported to the Police that the driver engaged by him was on the driving wheel of the jeep. For the same purpose he made surreptitious entries in the log book to create a false evidence in his favour. These were charges distinct from charges for which the petitioner was tried in Criminal Court. Apart from the charge of reckless act of driving the jeep of the Bank, the other charges were of irregular disbursement of loans to various parties without completing of the laid down formalities required for sanctioning loans. It cannot be held that the Bank as employer has tried to sit over the judgement of the Criminal Court and upset it.

9. The second ground urged based on the decision of the Claims Tribunal has also no substance. The subject matter of inquiry into the accident before the Claim Tribunal was not wholly the same as in the disciplinary inquiry where the alleged misconduct of the employee in service law was under investigation. The decision of the Claims Tribunal has been rendered on 21.6.2000 much after the Disciplinary Authority had passed the order of punishment and the Appellate Authority has dismissed his appeal. Before the Claims Tribunal a self serving statement was made by the contesting party i.e. the petitioner. The petitioner had reported to the Police that the vehicle was driven by a duly engaged driver. There was no evidence available to the claimants that the vehicle was driven by the petitioner himself and they were not interested in proving such a fact which would have gone against them by absolving the Insurance Company of its liability towards compensation. The judgement of the Claims Tribunal delivered much after the conclusion of disciplinary inquiry and the appeal is therefore of no avail to the petitioner.

10. The Learned Counsel by taking me through the

evidence on the question of accident made strenuous efforts to persuade me to come to a conclusion on facts that the petitioner was on the driving wheel on the date of the accident. In the course of arguments, I allowed the Counsel for the petitioner to go through the evidence and comment on it. I have however to remind myself of my limitations while deciding the case under Article 226. Here interference in findings of facts is not warranted unless there is perversity in appreciating evidence. It is not permissible for me to reappreciate the evidence which has been led in the inquiry and come to my own different conclusion. I find that there were several circumstances brought on record in the inquiry before the Inquiry Officer & the Disciplinary Authority to come to a conclusion that the petitioner was guilty of the reckless act of himself taking the jeep driving it and committing the accident. He tried to cover up his misconduct by introducing false name of a driver who was not to be found anywhere. In the inquiry, it was also proved through the evidence of the staff of the bank that the logbook was subsequently tampered with to show engagement of a part-time driver and payment to him by the petitioner.

11. The last ground urged is on the question of quantum of punishment. According to me the said question deserves some consideration. It is not the case of the Bank that the petitioner was an unlicensed driver. It is also not the case that he had made use of the jeep for his private work. The accident which occurred by the jeep was a mishap which should have happened even if a licenced driver would have been engaged and asked to drive the vehicle. For sheer accident, the petitioner could not be imposed with such serious penalty of dismissal from service. The Bank was not put to any financial loss due to the accident. The compensation was paid by the Insurance Company as the vehicle was duly insured. In such circumstances, the Disciplinary Authority and the Appellate Authority should have considered these mitigating circumstances while deciding the quantum of punishment.

12. On the alleged ground of disproportionate punishment, the Learned Counsel for the Bank submitted that apart from charge of reckless act of driving bank's jeep there were charges of disbursement of loans to several parties against the laid down procedure and the punishment imposed, on proof of all the above charges including the alleged act of driving the bank's jeep and causing an accident was warranted. For the limited purpose of finding out the gravity of the charges

regarding alleged irregular disbursement of loans, I have looked into the report of the inquiry. In banking transactions sometimes actions are taken on trust and belief that necessary formalities would be completed within a reasonable time. There was definitely an irregularity committed by the petitioner in disbursing loans before completing the formalities of getting loan document signed but it is not the case of the Bank that in any of such disbursement of loans any loss was caused to the Bank due to non-recovery of loans from the borrower. The more serious charge that this disbursement of loans was made only to gain favours from the borrowers has not been specifically held to have been proved. The charge of irregular disbursement of loans should also have been viewed in the above perspective for deciding the question of quantum of penalty.

13. Sitting as a Writ Court in deciding the application under Article 226 of the Constitution of India, I am conscious of my powers of interference in quantum of punishment. This Court can interfere only where the punishment is shockingly disproportionate. For the reasons mentioned above, I do not consider it proper to set aside the order of punishment as shockingly disproportionate and to impose a different punishment because that would be substituting punishment for the punishment imposed by the Disciplinary Authority. Taking into consideration the overall evidence against the petitioner, I consider it just and legal to send back the matter to the Appellate Authority to take an overall view of the evidence on record for a fresh decision on the quantum of penalty. In re-considering the question of quantum of penalty, the Appellate Authority shall also inquire as to whether in the long intervening period after his dismissal from service, the petitioner was gainfully employed or self employed elsewhere. In considering the question of quantum of penalty regard may also be had to the fact that the petitioner was waiting his turn for hearing of this case pending for no fault of the parties since the year 1989 before this Court.

14. As a result, the petition is partly allowed by setting aside the impugned order dated 15.11.1988 of the Appellate Authority of Bank of Baroda and remanding the matter to the said Appellate Authority for a fresh decision of the appeal of the petitioner on the question of quantum of punishment. Since this is a case of dismissal of the petitioner made on 19.2.1988, the Appellate Authority, after giving due notice to the petitioner, shall make endeavour to decide the case within a period of 3 months from the date of receipt of

copy of this order by it. Rule made absolute to the
aforesaid extent. No order as to costs.

(D.M.Dharmadhikari, CJ)
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